

This guidance was issued by NOAA/Office of Administration on December 28, 1994, and includes corrected text issued on February 16, 1995.

Changes in Leave Administration

Two recently-passed Public Laws expand the use of sick leave and administrative leave in several ways which are designed to be "family/friendly" - changes recommended in the National Performance Review Report issued by Vice President Gore in September 1993.

An overview of the changes is as follows:

- sick leave may now be used to provide care for family members, to include matters pertaining to death and funeral arrangements
- sick leave may now be reccredited after reemployment without regard to the previous time limit of three years for a break in service
- administrative leave may now be used for bone marrow or organ donation
- sick leave may now be used for purposes related to adoption of a child

Each of these changes is explained in detail in the fact sheet below for employees, supervisors, timekeepers, and labor organizations. Each entitlement has been available for some period of time, and retroactive application back to the various effective dates will be possible. It is also important to note a number of distinctions provided in the fact sheet, to include: the impact of an employee's work schedule (e.g. full-time vs. part-time) on the amount of sick leave available for the care of family members; the expanded definition of "family member"; the relationship between the Family and Medical Leave Act, the Leave Transfer Program, and use of sick leave for the care of family members; the retroactive availability of sick leave for purposes related to adoption; and recordkeeping and reporting requirements.

Note that the revisions to law and regulation discussed herein constitute changes in "conditions of employment" for purposes of

labor-management relations. Labor organizations within NOAA are being provided copies of this document and the revised regulations, and they are entitled to provide comments relative to the impact of these changes on their bargaining unit members. However, rather than delay the availability of leave benefits which would otherwise be accessible to employees right now, full entitlements under these changes are being provided immediately. In the event additional or different guidance is developed through consultation or partnership with a labor organization, copies of that guidance will be provided to affected employees.

Questions should be directed to your servicing Human Resources Advisor.

CHANGES IN LEAVE REGULATIONS

FACT SHEET FOR EMPLOYEES, SUPERVISORS, TIMEKEEPERS, AND LABOR ORGANIZATIONS

[NOTE: Although we have made an attempt to present the following information as simply as possible, due to the intricacies of the new leave regulations, further interpretation may be required. Please contact your Servicing Human Resources Advisor for additional explanations as needed.]

1. FEDERAL EMPLOYEES FAMILY FRIENDLY LEAVE ACT (FEFFLA)

OPM has issued regulations under Public Law 103-388 (the Federal Employees Family Friendly Leave Act or FEFFLA).

Basic Entitlement for Employees with Full-Time Work Schedules

As of December 2, 1994, full-time employees may use up to 40 hours sick leave in any single leave year for the following reasons:

- to provide care for a family member as a result of physical or mental illness, injury, pregnancy, childbirth, medical, dental or optical examination or treatment; or
- for bereavement purposes (i.e. to make arrangements necessitated by the death of a family member, to include funeral attendance.)

Supervisors may advance up to the full 40-hour entitlement of sick leave (i.e. five days) to full-time employees for use as outlined above. Employees on time-limited appointments (term or temporary) may be advanced leave in amounts no greater than they are expected to earn during their appointments.

Additional Entitlement: Employees with Full-Time Work Schedules

Provided a full-time employee maintains a sick leave balance of at least 80 hours, up to an additional 64 hours sick leave may be used for family/friendly purposes. The total sick leave used for such purposes may not to exceed 104 hours in a single leave year.

Since a **positive** sick leave balance of at least 80 hours is required to be eligible for the additional entitlement, advancement of sick leave is not appropriate beyond the basic FEFFLA entitlement of 40 hours.

Prorated Basic and Additional Entitlement: Employees with Other Than Full-Time Work Schedules

A part-time employee or an employee on an uncommon tour has a basic entitlement to use sick leave for family/friendly purposes equal to the average number of hours worked in a week. Likewise, the average number of hours worked in a week constitutes the maximum amount of sick leave which may be advanced. Under such work schedules, an employee who maintains a sick leave balance equal to at least twice the average number of hours worked in a week, has an additional entitlement to use sick leave for family/friendly purposes up to an amount equal to the number of hours of sick leave normally accrued by the employee in a leave year. The above formulas ensure that other than full-time employees have entitlements exactly proportionate to employees on full-time schedules, as shown below:

an employee working a part-time schedule of 20 hours per week has a basic entitlement of 20 hours sick leave per leave year for family/friendly purposes, and an additional entitlement of up to 32 hours providing he or she maintains a sick leave balance of 40 hours. The maximum usage would be 52 hours in a single leave year. This employee, whose work schedule is ~~one-half~~ that of a full-time employee, has ~~one-half~~ the basic and additional entitlement of a full-time employee.

Definition of Family Member under FEFFLA

Under FEFFLA, the definition of family member includes: a spouse, children (including adopted), parents, brothers and sisters, grandparents, in-laws (mother, father, sister, brother), and "any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship".

Substitution under the Family and Medical Leave Act

Beginning December 2, 1994, sick leave may also be substituted for unpaid leave or substituted annual leave under the Family and Medical Leave Act (FMLA) which the employee is using to care for a family member. Sick leave may only be substituted under FMLA in the amounts and subject to the conditions that it could normally be available to the employee under FEFFLA.

Leave Transfer Program

Beginning December 2, 1994, an employee seeking leave donations to care for a family member must use sick leave consistent with FEFFLA before receiving donated leave. An employee who is currently using leave donations to care for a family member must use his or her sick leave before being allowed to use further donated leave. Sick leave in this context includes the sick

leave balance carried forward on the most recent Leave Recipient Leave Audit (LRLA) form, regular accruals based on nondonated time (from Part A of the LRLA), and accruals based on donated leave (from Part B of the LRLA).

An applicant for donated leave need only exhaust sick leave to the extent it would otherwise be available to the employee under FEFFLA. For example, a full-time employee who has 200 hours of sick leave on December 2 must use 104 hours (i.e. both the basic and additional entitlements) before being allowed to use donated leave. On the other hand, a full-time employee who has 100 hours of sick leave need only use 40 hours of sick leave before being allowed to use donated leave. In the latter example, **the employee would only have 60 hours of sick leave remaining** after using the basic FEFFLA entitlement of 40 hours, which is not enough to warrant the additional entitlement. "All available leave" in this case would be 40 hours. As mentioned above, the additional entitlement to use more than 40 hours and up to 104 is based on the employee **maintaining a sick leave balance of 80 hours or more** - that would not be the case in the second example.

While using donated leave under the Leave Transfer Program, the recipient accrues both annual and sick leave. The ongoing accrual of sick leave may result in additional amounts of "available leave" being used under FEFFLA. Using the second example from above, the employee with 100 hours of sick leave would be required to use 40 hours for the care of a family member before being allowed to use any donated leave. The employee's sick leave balance while receiving donated leave is not static - it would increase by 4 hours a pay period. After 5 pay periods, the employee's sick leave balance would be **80 hours - the minimum balance required to enable the employee to use more than 40 hours sick leave under FEFFLA to care for a family member.** Sick leave in excess of 80 hours accrued by an employee while receiving donated leave constitutes "available leave" under the Leave

Transfer Program. In the above example, once the employee reached a sick leave balance of 80 hours, the employee would be required to maintain that same sick leave balance - by using 4 hours each pay period as it accrues - until such time as he or she reached the maximum entitlement under FEFLA for use of sick leave -- 104 hours in a single leave year.

No Accumulation or Carryover Permitted

An employee who does not exhaust sick leave available for family/friendly purposes in one leave year may not accumulate the remaining basic or additional entitlements for carryover into the following leave year. The maximum amount of sick leave which can be used for family/friendly purposes remains the same in any one leave year.

Requesting Sick Leave under FEFFLA

As of December 2, 1994, an employee who wishes to use sick leave for family/friendly purposes or to substitute sick leave for annual leave or LWOP used for care of a family member (except leave substituted for family or medical leave) must submit an SF-71, Leave Request, marked "Sick Leave". The purpose for the leave (e.g. "Family friendly leave - mother care" or "bereavement - mother") must appear in the "Remarks" Section. An employee who wishes to substitute sick leave for unpaid leave under the FMLA to care for a family member will do so using the CD-518, Application for Family or Medical Leave. If the employee is being advanced sick leave, the SF-71 must be annotated to show "Advanced Sick Leave" together with the information noted above in the "Remarks" Section of the SF-71.

Time and Attendance Report Coding

Transaction code 62, Sick Leave Used, MUST be used to record an employee's paid absence for family/friendly leave purposes. The hours and/or fractional hours used are to be recorded in the TIME IN PAY STATUS Section of the appropriate PAYROLL WEEK 1 and/or 2 Screen(s) of the time and attendance report. In addition, the TOTAL HOURS/FRACTIONAL HOURS USED and a remark indicating the PURPOSE for use MUST be manually recorded in the REMARKS Section (e.g. Bereavement/Mother=16 hrs, Mother Care=24 hrs) of the PAYROLL WEEK 1 and/or 2 Screen(s).

Recordkeeping/Report Requirements

The new regulations require Federal agencies to maintain and report information on the use of sick leave for family/friendly purposes, beginning with leave year 1995 (i.e. 1/8/95). The Department of Commerce is in the process of establishing a special T&A code to track sick leave usage under FEFFLA, but until that is accomplished, leave approving officials must maintain records which contain the information required by regulation, which is:

- the grade (or pay level) and gender of each employee who uses sick leave under FEFFLA,
- the total number of sick leave hours used by each employee for family care or bereavement purposes, and

- for employees using sick leave under FEFFLA, the total hours of sick leave used by each employee for all other purposes.

RECREDIT OF SICK LEAVE

Under FEFFLA, the three-year time limit after which sick leave is no longer recredited after a break in service has been removed. The regulation has been revised to state that a former employee is entitled to recredit of sick leave (regardless of the date of separation) if reemployed in the Federal Government on or after December 2, 1994 - unless the sick leave was forfeited upon reemployment in the Federal government before December 2, 1994.

2. TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT APPROPRIATIONS ACT FOR FISCAL YEAR 1995 (Public Law 103-329)

Administrative Leave for Bone Marrow or Organ Donation

Under Public Law 103-329 and effective September 30, 1994, Federal employees may use up to seven days of administrative leave per calendar year to serve as a bone marrow or organ donor.

Sick Leave for Adoption

Under Public Law 103-329 and likewise effective September 30, 1994, Federal employees may use sick leave for purposes related to adoption of a child. Adoption-related purposes include: appointments with adoption agencies, social workers, and attorneys; court proceedings; and required travel. There is no specified limit on the amount of sick leave approved for this purpose, and sick leave may be advanced for adoption-related purposes following the same procedures as for any other purpose. As for requesting sick leave for foreseeable medical, dental, or optical appointments, employees will be expected to request sick leave in advance of adoption-related appointments.

Sick leave may be substituted retroactively for annual leave **BUT NOT FOR LWOP** used by an employee for adoption-related purposes between September 30, 1991 and September 30, 1994, providing such substitution does not result in excess annual leave (i.e. for full-time employees, a balance of more than 240 hours at the end of a leave year). Restoration of annual leave otherwise forfeited in this situation is not permissible. Employee requests for retroactive substitution must be in writing and include: the period(s) and amount(s) of annual leave for which sick leave will be substituted, copies of relevant Statements of Earnings and

Leave (if available), and documentary evidence of adoption proceedings.

RETROACTIVE USE OF ENTITLEMENTS BACK TO THEIR EFFECTIVE DATES

Employees who qualified for any of the above entitlements at any time since the entitlement effective dates will be able to request substitution of the appropriate leave (sick or administrative) for the leave they previously used, provided they otherwise meet the conditions prescribed herein, to include presenting "administratively acceptable" documentation to their supervisors as discussed below. As mentioned in the above paragraph, sick leave may not be retroactively substituted for annual leave under any of these entitlements if such substitution were to create an excess annual leave situation.

RESPONSIBILITIES OF LEAVE-APPROVING OFFICIALS

Although the revised laws and regulations discussed herein provide new reasons for granting sick leave, the **responsibilities** of leave-approving officials as stated in regulations governing sick leave did not change - they must satisfy themselves that there is "administratively acceptable" documentation to support employee requests. Leave-approving officials are expected to demonstrate fair, equitable, and consistent application of leave regulations and procedures.